IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CRAIG STOVER, Appellant, v. PIERCE COUNTY CORRECTIONS HEALTH CLINIC; PIERCE COUNTY JAIL; and PIERCE COUNTY, a local governmental entity of the state of Washington, Respondents.	No. 37167-7-II ORDER WITHDRAWING OPINION, SUBSTITUTING NEW OPINION, AND DENYING MOTION FOR RECONSIDERATION

The unpublished opinion in this case was filed on March 31, 2009. The Appellant, Craig Stover, has filed a motion for reconsideration.

We hereby withdraw said opinion and substitute the attached new opinion.

Further, we deny Appellant's motion for reconsideration.

DATED this _____ day of _____, 2009.

Penoyar, A.C.J.

Bridgewater, J.

Armstrong, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CRAIG STOVER, Appellant, v. PIERCE COUNTY CORRECTIONS HEALTH CLINIC; PIERCE COUNTY JAIL; and PIERCE COUNTY, a local governmental entity of the state of Washington, Respondents.	No. 37167-7-II UNPUBLISHED OPINION

Penoyar, A.C.J. — Craig Stover brought an action for damages against the Pierce County Corrections Health Clinic (Clinic), the Pierce County Jail (Jail), and Pierce County (County) after he suffered a seizure while in custody. Both parties moved for summary judgment. The trial court denied Stover's motion, granted the defendants' motion in part, and subsequently dismissed with prejudice Stover's remaining causes of action. Stover now appeals, arguing that the trial court erred by (1) dismissing his Eighth Amendment claim; (2) allowing the defendants to provide a copy of the entire jail roster when he requested the specific names, addresses, and telephone numbers of inmates occupying the cell in which he was placed after he returned from the hospital; (3) granting the defendants' motion for summary judgment in part and denying his motion; and (4) dismissing his remaining causes of action. Stover's arguments are unpersuasive and we affirm.

FACTS

On the afternoon of March 11, 2004,[1] Puyallup police officers arrested Stover after they stopped the vehicle in which he was a passenger for a traffic violation and discovered that there were outstanding warrants for his arrest. One of the arresting officers observed that Stover appeared to have been "drinking heavily."[2] Clerk's Papers (CP) at 116. Stover arrived at the Jail at approximately 2:53 p.m.

During the booking process, Stover advised Jail staff that he had colon cancer, arthritis, hyperglycemia, and a seizure disorder (epilepsy). He also informed staff that he had been having "pet mals," or petit mal seizures.[3] CP at 233-34, 239. Clinic staff called booking nurse Becky Hay, who assessed Stover at 3:00 p.m. Stover informed Hay that he had a prescription for medication and that his current pharmacy was located at the Puyallup Safeway. Hay filled out a medication verification form, but she was unable to verify Stover's medications at that time.[4]

---

[1] Stover repeatedly asserts that his arrest took place on March 10. The defendants argue and the record reflects, however, that he was arrested on March 11. Furthermore, Stover fails to explain "how any of this information is relevant or how it relates to his cause of action." Resp'ts' Br. at 38.

[2] Stover subsequently admitted to having "one drink" that day. CP at 537.

[3] It is unclear when, exactly, and to whom Stover made this disclosure. Stover appears to assert that he informed Jail staff that he was having "pet mals" prior to booking and on the day his seizure occurred. Stover claims that "pet mals" generally precede grand mal seizures. The defendants' medical expert testified, however, that petit mal seizures never precede a grand mal seizure.

[4] Stover asserts that he heard Hay verify his prescription for Tegretol with the pharmacy over the phone. Stover does not provide evidence, however, establishing that this actually occurred. He also claims that he told Hay that he had not purchased medication from the pharmacy for a year because he had a reserve of medication at home. Tegretol (carbamazepine) is an anti-seizure medication.

Because Jail policy dictates that staff will not administer medications until prescriptions are verified, Hay did not provide Stover with any medications. After observing him and determining that he was medically stable, Hay booked Stover into the Jail's general population at 3:19 p.m.[5]

The following day, Hay faxed a signed consent for release of information form to Stover's physician, Dr. Mark Brooks, and St. Joseph Hospital; another nurse successfully verified Stover's prescription for Tegretol with his pharmacy. The pharmacy informed her, however, that Stover had not filled his prescription for approximately one year. The same day, Jail staff escorted Stover to Tacoma Municipal Court and placed him in a holding room at the back of the courtroom.[6] Corrections Officer Hector Hernandez was assigned to monitor the inmates that day. At approximately 12:35 p.m., Hernandez, who was sitting five to seven feet away from Stover, heard a thump and inmates yelling. Through the holding room door's glass window, Hernandez observed Stover lying on the floor; blood covered his face. Hernandez immediately asked the sheriff's office to call 911 and requested additional officers. While he waited, Hernandez held Stover down to keep him from injuring himself further and tried to make him comfortable. Paramedics subsequently transported Stover to the St. Joseph's Hospital emergency room.

At the hospital, an emergency room physician treated Stover for a seizure, a facial contusion, and a one-centimeter lip laceration.[7] In his medical report, the physician noted that

---

[5] According to Jail policy, a booking nurse may use her discretion in determining whether a prospective inmate is medically stable for admittance and where the Jail will house him once admitted. She need not consult with a physician before making these determinations.

[6] During his deposition, Hernandez stated that he was "almost 100% [sure]" that Stover was not handcuffed that day. CP at 569. The record is not clear, and the parties could not confirm at oral argument, whether Stover was seated on a bench or standing in the holding tank.

[7] In his complaint, Stover claims that the fall "has precipitated more frequent and more severe seizures than he previously suffered," and he now suffers "massive migraine headaches." CP at 3.

during the seizure, Stover had lost consciousness and experienced urinary incontinence. He also noted that Stover had not taken his Dilantin[8] prescription for one month and that he had not taken Tegretol for three weeks.[9] Finally, the physician concluded that the cause of Stover's seizure was "missed recent doses of seizure meds." CP at 182. When Stover returned from the hospital, Jail staff first placed him in the general population. Stover then spent several days in the Jail medical unit before his eventual release. Per his request, Stover also visited with a Jail physician during this time.

On September 9, 2005, Stover filed a complaint for damages against the Clinic, the Jail, and the County, alleging the following causes of action: (1) res ipsa loquitor; (2) violation of the Eighth Amendment; (3) outrage; (4) negligence; (5) medical malpractice; and (6) failure to adequately and properly train employees. After some discovery, Stover moved for summary judgment; the defendants subsequently filed a cross-motion for summary judgment. On August 25, 2006, the trial court denied Stover's motion and granted the defendants' motion in part, dismissing Stover's res ipsa loquitor, Eighth Amendment, and outrage claims with prejudice.

On November 9, 2007, after additional discovery, the trial court heard cross summary judgment motions for the second time. It granted the defendants' second motion in part, dismissing Stover's medical malpractice claim and his claim that the defendants had failed to adequately train and supervise its employees. Furthermore, the trial court noted that it would "hear further argument on claims of common law negligence which may remain." CP at 810.

---

[8] Dilantin (phenytoin sodium) is an anti-seizure medication.

[9] Stover claims that, following a grand mal seizure, a person "literally lose[s] their orientation as to time, location, events occurring etc." and that if this statement was taken from him, "it was not an accurate statement as [he takes] Tegretol three times a day." Appellant's Reply Br. at 10.

On November 30, the trial court heard Stover's motion for reconsideration, which it denied. After considering whether any common law negligence claims remained, it dismissed with prejudice Stover's remaining causes of action.[10] It stated:

> [The] Defendants' Motion for Summary Judgment is GRANTED IN ITS ENTIRETY this Court having found that there is no genuine issue as to a material fact in dispute that Defendant violated the appropriate standard of care in its care and treatment of Plaintiff . . . [and] [t]hat there is no dispute as to any material fact that any acts or omissions of Defendant were the proximate cause of Plaintiff's seizure or other any alleged injury . . .

CP at 896. Stover now appeals.

ANALYSIS

As an initial matter, we acknowledge that it would have been preferable for the defendants to have taken greater precautions to ensure Stover's safety in this case. However, Stover has failed to establish that the defendants had a legal duty to restrain him in a restraint chair, and/or other devices designed to prevent him from falling in case of a seizure. Furthermore, he has failed to produce any evidence of the mechanism of injury or proximate causation that indicates a relationship among the defendants' legal duty, his injuries, and the actions or inactions of the defendants. Therefore, we must affirm the trial court's decision.

I. Standard of Review

We review summary judgment orders de novo and perform the same inquiry as the trial court. *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004) (citing *Kruse v. Hemp*, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993)). Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the

[10] Stover argues that the trial court never addressed his remaining common law negligence claim. Citing to a missing RP volume, the defendants claim that the trial court did, in fact, hear oral argument regarding this issue. We discuss this argument in greater depth below.

affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). We consider all facts in the light most favorable to the nonmoving party. *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005) (citing *Atherton Condo. Apartment-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990)). Summary judgment is granted only if reasonable persons could reach but one conclusion from all the evidence. *Vallandigham*, 154 Wn.2d at 26 (citing *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982)).

A defendant can move for summary judgment in one of two ways: (1) the defendant can set forth its version of the facts and allege that there is no genuine issue as to those facts, or (2) the defendant can show that there is an absence of evidence to support the plaintiff's case. *Guile v. Ballard Comty. Hosp.*, 70 Wn. App. 18, 21-22, 851 P.2d 689 (1993) (citing *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225 n.1, 770 P.2d 182 (1989); *Hash v. Children's Orthopedic Hosp. & Med. Ctr.*, 11 Wn.2d 912, 916, 757 P.2d 507 (1998)). Under the latter method, the defendant is not required to support its motion with affidavits or other materials disproving the plaintiff's case. *Guile*, 70 Wn. App. at 22 (citing *Young*, 112 Wn.2d at 226). The defendant need only "identify those portions of the record, together with the affidavits, if any, which he or she believes demonstrate the absence of a genuine issue of material fact." *Guile*, 70 Wn. App. at 22 (citing *White v. Kent Med. Ctr., Inc.*, 61 Wn. App. 163, 170, 810 P.2d 4 (1991)).

"If the moving party satisfies its burden, the nonmoving party must present evidence that demonstrates that material facts are in dispute." *Atherton Condo. Apartment-Owners Ass'n Bd. of Dirs.*, 115 Wn.2d at 516. If the nonmoving party fails to do so, then summary judgment is

proper. *Vallandigham*, 154 Wn.2d at 26 (citing *Atherton Condo. Apartment-Owners Ass'n Bd. of Dirs.*, 115 Wn.2d at 516). The nonmoving party may not rely on speculation, argumentative assertions that unresolved factual issues remain, or having its affidavits considered at face value. *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986)).

II. Eighth Amendment Claim

First, Stover argues that the trial court erred by dismissing his Eighth Amendment cause of action. The defendants contend that the trial court properly dismissed this claim because Stover failed to make a prima facie case of a constitutional violation. We agree.

The federal Civil Rights Act, 42 U.S.C. § 1983, provides a remedy for the violation of a person's constitutionally protected rights by "any person acting under color of state law." *Crisman v. Pierce County Fire Prot. Dist. No. 21*, 115 Wn. App. 16, 24-25, 60 P.3d 652 (2002) (quoting *Monell v. City of New York Dept. of Soc. Servs.*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)). Municipalities are "persons" subject to damages under § 1983; however, they cannot be held liable on a respondeat superior theory. *Baldwin v. City of Seattle*, 55 Wn. App. 241, 248, 776 P.2d 1377 (1989). A municipality may be liable where it implements or executes a policy its officers officially adopted in violation of the constitution or where the alleged constitutional deprivation occurs because of government custom. *Crisman*, 115 Wn. App. at 25 (citing *Monell*, 436 U.S. at 690-91). In order to establish a § 1983 claim against a municipality, a plaintiff must: (1) identify a specific policy or custom; (2) demonstrate that the policy was sanctioned by the official or officials responsible for making policy in that area of the city's business; (3) demonstrate a constitutional deprivation; and (4) establish a casual connection between the custom or policy and the constitutional deprivation. *Baldwin*, 55 Wn. App. at 248.

Lack of proof on any of the above elements requires dismissal of the action. *Baldwin*, 55 Wn. App. at 248.

The Eighth Amendment to the United States Constitution provides that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Deliberate indifference to prisoners' serious medical needs constitutes the "unnecessary and wanton infliction of pain" proscribed by the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976). This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed. *Estelle*, 429 U.S. at 104-05. Regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under § 1983. *Estelle*, 429 U.S. at 105. It does not follow, however, that every claim by a prisoner that he has not received adequate medical treatment states a violation of the Eighth Amendment. *Estelle*, 429 U.S. at 105. An inadvertent failure to provide adequate medical care, for example, cannot be said to constitute an "unnecessary or wanton infliction of pain" or to be "repugnant to the conscience of mankind." *Estelle*, 429 U.S. at 105-06.

In this case, Stover has failed to establish all the elements of his claim. First, it does not appear that Stover has either identified a specific policy or custom or demonstrated that the policy was sanctioned by officials responsible for making policy in that area.[11] Second, Stover has not established a constitutional deprivation—he has not shown that Jail staff acted with deliberate

[11] It is unclear whether the custom or "policy" Stover takes issue with in this case is the Jail's policy of not administering medications without verification, its initial decision to house him with the general population, its practice of handcuffing seizure-prone inmates, or its treatment of him after he returned from the hospital. Stover does not discuss this element with any specificity.

indifference to his serious medical needs.

Third, and most notably, Stover has failed to advance any evidence supporting a casual connection between the defendants' policies and his injuries. Dr. Miguel Balderrama, the Jail's medical director, testified in his deposition that in order to effectively control seizures, a patient must maintain a certain blood level of Tegretol at all times. Balderrama further testified that in this case, it is highly probable that Stover did not benefit from the residual benefits of his medication because he had not taken it for the three weeks preceding his booking. Finally, Balderrama testified that even if Jail staff had given Stover his medication at booking, this would not have prevented the seizure from occurring. In his own declaration, Stover acknowledged that he has seizures when he does not take his medication. In this case, Stover's medical records reflect that he had not taken his anti-seizure medications for several weeks at the time of his booking. Stover asserts that he has never missed a dosage of his medication; however, he may not solely rely on argumentative assertions that unresolved factual issues remain, or have his affidavits considered at face value. *Seattle Police Officers Guild v. City of Seattle*, 151 Wn.2d 823, 848, 92 P.3d 243 (2004). Other medical records submitted by the defendants demonstrate that on more than one occasion, Stover has visited the emergency room after suffering a seizure; during those visits, he admitted to missing medication dosages.

Furthermore, Stover's own physician, Dr. Mark Brooks, testified in his deposition that drinking alcohol can diminish the effectiveness of anti-seizure medication and/or lower one's seizure threshold. Concerned that Stover may be using alcohol, Brooks directed Stover to stop drinking alcohol on more than one occasion in the years preceding Stover's booking. As previously mentioned, Stover admitted to having one drink the day of his arrest; and one of the

arresting officers reported that Stover appeared to have been drinking heavily. Finally, Balderrama testified that Stover likely lost control over his body during the seizure; therefore, whether handcuffed or not, he would not have been able to break his own fall.

In the face of this unchallenged evidence that suggests possible causes for Stover's fall and injury that are not related to Jail personnel actions, Stover fails to affirmatively establish a question of fact as to a casual connection between the defendants' policies/practices and his injuries. Because Stover has failed to establish all of the elements of his § 1983 claim, we affirm the trial court's ruling dismissing this claim.

III. Motion to Compel Discovery

Stover next argues that the trial court erred when, in response to his request that the defendants provide the names, addresses, and telephone numbers of those inmates occupying the cell in which he was placed when he returned from the hospital, it allowed the defendants to provide a copy of the entire jail roster. The defendants contend that we should not review the trial court's ruling regarding this matter, as Stover has neither produced the trial court's oral/written ruling on the motion nor provided us with any authority or analysis regarding this issue. Stover does not respond to these assertions.

Our review of the record indicates that Stover has failed to provide us with either the trial court's oral ruling or its written ruling addressing his motion. Furthermore, the record does not contain a transcript of this proceeding. Rather, Stover asserts that "[b]y memorandum of journal entry, the Court did not order the Defendant to provide [the information requested] but only to provide a copy of the entire jail roster, the names only, with no identifying information." Appellant's Br. at 10. The minutes of proceeding to which Stover refers states, "Court orders

state to make available a copy of jail roster for 2 days in question; will not order identifying info to be given." CP at 335. It then states, "Order will be drafted/signed and presented." CP at 335. Neither counsel for either party nor the trial judge signed this document. Stover has the burden of providing an adequate record for us to review issues raised; the trial court's decision must stand if this burden is not met. RAP 9.2.

Furthermore, Stover does not provide legal authority in support of his argument that the trial court erred with respect to this ruling. We will not review an issue for which inadequate argument has been briefed or that is given only passing treatment. *Timson v. Pierce County Fire Dist. No. 15*, 136 Wn. App. 376, 385, 149 P.3d 427 (2006) (citing *State v. Thomas*, 150 Wn.2d 821, 868-69, 83 P.3d 970 (2004)); RAP 10.3(a)(6). Therefore, we decline to review this issue.[12]

IV. Motions for Summary Judgment

Stover next argues that the trial court erred by granting the defendants' second motion for summary judgment and by denying his motion. The defendants contend that we should decline to address Stover's arguments regarding these issues, as he "fails to provide this court with citations to legal authority." Resp'ts' Br. at 19. Furthermore, they argue that the trial court properly dismissed Stover's negligence and medical malpractice claims because no genuine issues of material fact existed; therefore, the defendants were entitled to dismissal as a matter of law.

[12] On review of a motion to compel discovery, the trial court will be found to have abused its discretion only when it based its decision on unreasonable or untenable grounds. *Clarke v. State Attorney Gen. Office*, 133 Wn. App. 767, 777, 138 P.3d 144 (2006). It does not appear that the trial court denied Stover's motion; rather, it did not grant his request in its entirety. Stover has failed to articulate why the trial court's ruling constituted an abuse of discretion.

Like the aforementioned issue, Stover fails to provide legal authority in support of his argument that the trial court erred by granting the defendants' second motion for summary judgment. RAP 10.3(a)(6). Furthermore, Stover refers to facts that his citations to the record do not support. RAP 10.3(a)(5). Therefore, we decline to review this issue.[13]

V. Dismissal of Remaining Causes of Action

Finally, Stover argues that the trial court erred by dismissing his remaining causes of action because in its order granting the defendants' motion for summary judgment, the trial court only addressed the issues of medical negligence and the defendants' failure to adequately train or supervise their employees; the trial court did not address his remaining common law negligence claim. The defendants disagree, also noting that Stover's "briefing leaves some question as to the precise issue(s) being raised" and "[w]ithout adequate, cogent argument and briefing, it is difficult to respond meaningfully [to his claim]." Resp'ts' Br. at 35.

The record demonstrates that the trial court considered whether any remaining common law negligence claims may have survived its prior rulings. Although it is unclear whether the trial court provided counsel with an additional opportunity to argue regarding this issue, the record clearly demonstrates that it assessed the parties' arguments and determined that Stover failed to establish that the defendants had a legal duty to further restrain Stover or accommodate his needs differently in this case. Stover appears to offer the declaration of Ronald Hyland, Sumner's retired police chief, to support his claim that he "should have been housed in the medical unit of the Jail," "should not have been handcuffed in the holding tank," or "should have been strapped to the chair in such a fashion that he could not have fallen from the chair should he have a seizure."

[13] As previously noted, Stover has also failed to establish the defendants' legal duty in this case.

CP at 266-67. Although Hyland declares that failure to take the aforementioned precautions "would be a violation of reasonable law enforcement practices in the operation of a Jail facility," CP at 267, this alone does not establish the defendants' legal duty in this case. Here, the defendant himself knew that he was likely to have a seizure and still apparently chose to remain in a position from which he could fall, apparently sitting on a bench or standing. Why Jail personnel would have a duty to force Stover to protect himself is unclear. Similarly, the medical testimony he highlights in his motion for reconsideration does not establish the requisite legal duty needed to prevail on a claim of negligence.

We agree with the State that Stover's briefing regarding these issues and the issue of causation is simply inadequate. For the aforementioned reasons, we affirm the trial court's ruling dismissing Stover's remaining causes of action.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Penoyar, A.C.J.

We concur:

Bridgewater, J.

Armstrong, J.